

**IN THE NORTHERN DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BOARD OF TRUSTEES OF THE)	
NORTHERN ILLINOIS BENEFIT FUND,)	
BOARD OF TRUSTEES OF THE)	
NORTHERN ILLINOIS PENSION FUND,)	
BOARD OF TRUSTEES OF THE)	
NORTHERN ILLINOIS EDUCATION)	
FUND, BOARD OF TRUSTEES OF)	No. 13 CV 6433
THE NORTHERN ILLINOIS)	
RETIREMENT FUND,)	Judge
)	
Plaintiffs,)	Magistrate Judge
)	
v.)	
)	
TOBIN BROTHERS, INC.,)	
an Illinois corporation,)	
)	
Defendants.)	

COMPLAINT

Plaintiffs, by their attorneys, DONALD D. SCHWARTZ, ANDREW S. PIGOTT, and
ARNOLD AND KADJAN, complain against Defendant, **TOBIN BROTHERS, INC.**, as
follows:

ALLEGATIONS COMMON TO ALL COUNTS

1. Jurisdiction of this cause is based upon Section 502 of the Employee Retirement Security Act of 1974, 29 U.S.C. Section 1132, 1145 ("ERISA"), as amended, and Section 301 of the Labor Management Relations Act, 29 U.S. C. 185.

2. Venue is founded pursuant to 29 U.S.C. Section 1132 (e)(2) in this District where the Funds, as described in Paragraph 3, are administered.

3. (a) The Plaintiffs in this count are the BOARD OF TRUSTEES OF THE
NORTHERN ILLINOIS BENEFIT FUND, BOARD OF TRUSTEES OF THE NORTHERN

ILLINOIS PENSION FUND, BOARD OF TRUSTEES OF THE NORTHERN ILLINOIS EDUCATION FUND, BOARD OF TRUSTEES OF THE NORTHERN ILLINOIS RETIREMENT FUND ("the Funds"), and have standing to sue pursuant to 29 U.S.C. Section 1132(d)(1).

(b) The Funds have been established pursuant to Collective Bargaining Agreements previously entered into between the Plumbers & Pipefitters Local 501, U.A. and its affiliated locals (the "Union") and certain employer associations whose employees are covered by the Collective Bargaining Agreement with the Union.

(c) The Funds are maintained and administered in accordance with and pursuant to the provisions of the National Labor Relations Act, as amended, and other applicable state and federal laws and also pursuant to the terms and provisions of the agreements and Declarations of Trust which establish the Funds.

4. (a) Defendant, **TOBIN BROTHERS, INC. ("TOBIN BROTHERS")**, is an Illinois corporation engaged in an industry affecting commerce.

(b) **TOBIN BROTHERS** has engaged in an industry affecting commerce within this judicial district. In particular, the economic activity leading to the employee benefit plan contribution delinquency claimed in this complaint took place in the Northern District of Illinois.

5. Since on or before January 1, 2012, **TOBIN BROTHERS** entered into a Collective Bargaining Agreement with the Union pursuant to which it is required to pay specified wages and to make periodic contributions to the Funds on behalf of certain of its employees.

6. Since January 1, 2012, **TOBIN BROTHERS** has admitted, acknowledged and

ratified the Collective Bargaining Agreements entered into with the Union by filing periodic report forms with the Funds by making some but not all of the periodic payments to the Funds as required by the Collective Bargaining Agreements.

7. By virtue of certain provisions contained in the Collective Bargaining Agreements, **TOBIN BROTHERS** is bound by the Trust Agreement establishing the Funds.

COUNT ONE

Audit

8. Plaintiffs reincorporate paragraphs one through seven of the Complaint into this Count as though fully set forth herein.

9. Under the terms of the Collective Bargaining Agreements and Trust Agreements to which it is bound, **TOBIN BROTHERS**, when given reasonable notice by Plaintiffs or their representatives, was required to submit all necessary books and records to Plaintiff's auditor for the purpose of determining whether or not it is in compliance with its obligation to contribute to the Funds..

10. **TOBIN BROTHERS** failed to contribute for the months of June and July 2013, so that the Funds require an audit to determine the extent of its contribution non-compliance.

WHEREFORE, Plaintiffs pray for relief as follows:

A. Entry of an order compelling **TOBIN BROTHERS** to submit to a fringe benefit contribution audit by Plaintiff's auditor for the period January 1, 2012 to the present;

B. Judgment be entered against **TOBIN BROTHERS** and in favor of Plaintiffs, for any amounts determined to be due by the audit;

C. Plaintiffs be awarded their costs herein, including reasonable attorneys' fees and costs incurred in the prosecution of this action, as provided in the applicable agreements and ERISA Section 502(g)(2);

D. This Court grant Plaintiffs such other and further relief as it may deem appropriate under the circumstances.

COUNT TWO
Known Liquidated Damages

11. Plaintiffs reincorporate paragraphs one through seven of the Complaint into this Count as though fully set forth herein.

12. Under the Collective Bargaining Agreement and Trust Agreements, Defendant was obligated to submit its contributions on the fifteenth of the month following the contribution month.

13. Both the Collective Bargaining Agreement and the Trust Agreements authorize the imposition of liquidated damages in the event of late payment.

14. **TOBIN BROTHERS** submitted its contributions late the months of February and May 2013.

15. The liquidated damages due as a result of the late contributions referred to in the preceding paragraph are \$1,456.49.

WHEREFORE, Plaintiffs pray for relief as follows:

A. Judgment be entered against **TOBIN BROTHERS** and in favor of Plaintiffs, in the amount of \$1,456.49;

B. Plaintiffs be awarded their costs herein, including reasonable attorneys' fees and costs incurred in the prosecution of this action, as provided in the applicable agreements and ERISA Section 502(g)(2);

C. This Court grant Plaintiffs such other and further relief as it may deem appropriate under the circumstances.

Respectfully submitted,

**BOARD OF TRUSTEES OF THE NORTHERN
ILLINOIS BENEFIT FUND, et al.**

By: s/Andrew S. Pigott
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